

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application of United States Cellular Corporation)	WT Docket No. 16-14
and Hershey Cooperative Telephone Company)	
)	
For Consent To Assign License)	

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2016

Released: September 21, 2016

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of USCC and Hershey for Commission consent to the assignment to USCC from Hershey of one Lower 700 MHz B Block license covering part of one local market area in Nebraska. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ The *Mobile Spectrum Holdings Report and Order* also requires that, where the entity acquiring below-1-GHz spectrum already holds approximately one-third or more of the below-1-GHz spectrum in a particular market, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms, irrespective of other factors.²

2. USCC is already attributed with more than one-third of below-1-GHz spectrum in the implicated counties in this local market, and as a result of this proposed transaction, it would further increase its attributable low-band spectrum holdings. After carefully evaluating the likely competitive effects of USCC’s increased aggregation of below-1-GHz spectrum in this rural local market area, we find that the likelihood of competitive harm is low. Further, we find that some public interest benefits are likely to be realized, such as the deployment of a competitive LTE network and a better consumer experience. Based on the record before us and our public interest review, we find that the proposed assignment of this license would serve the public interest, convenience, and necessity, and therefore we consent to the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

3. *Description of the Applicants.* USCOC Nebraska/Kansas, LLC, is an indirect wholly-owned subsidiary of United States Cellular Corporation (together with USCOC Nebraska/Kansas, LLC,

¹ Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015).

² *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287.

USCC), which is headquartered in Chicago, Illinois and provides wireless telecommunications services to approximately 4.8 million customers in 23 states.³ Hershey Cooperative Telephone Company (Hershey, and together with USCC, the Applicants) is a rural telephone cooperative serving parts of western Nebraska.⁴

4. *Description of the Transaction.* On December 4, 2015, USCC and Hershey filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁵ seeking Commission consent to assign one Lower 700 MHz B Block license to USCC.⁶ Through this proposed transaction, USCC would acquire 12 megahertz of low-band spectrum from Hershey in four counties covering part of the Nebraska 6 – Keith Cellular Market Area (CMA 538).⁷ USCC is already attributed with 49 megahertz and, as a result of the proposed transaction, would be attributed with 61 megahertz of below-1-GHz spectrum in these four counties in Nebraska 6 – Keith.⁸

5. *Standard of Review.* Pursuant to Section 310(d) of the Act,⁹ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and authorizations would serve the public interest, convenience, and necessity.¹⁰ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹¹ other applicable

³ United States Cellular Corp., SEC Form 10-K, at 1 (filed Feb. 24, 2016), <http://www.sec.gov/Archives/edgar/data/821130/000082113016000050/usmform10k.htm>. USCC is a majority-owned (84%) subsidiary of Telephone and Data Systems, Inc. *Id.*; Application for Assignment of License from Hershey Cooperative Telephone Company to USCOC Nebraska/Kansas, LLC, ULS File No. 0007044170 (filed Dec. 4, 2015) (Application), Exhibit 1 – Description of the Transaction at 1 (Public Interest Statement).

⁴ Response of Hershey to the General Information Request Dated Mar. 17, 2016, WT Docket No. 16-14, at 2 (Mar. 31, 2016) (Hershey Information Request Response); Hershey Cooperative Telephone Company, <http://www.hersheytel.net> (last visited Aug. 18, 2016).

⁵ 47 U.S.C. § 310(d).

⁶ Application.

⁷ *United States Cellular Corporation and Hershey Cooperative Telephone Company Seek FCC Consent to the Assignment of a Lower 700 MHz B Block License in Nebraska*, Public Notice, 31 FCC Rcd 2046 (WTB 2016) (*Accepted for Filing Public Notice*); Application, Attachment A – USCC Spectrum Aggregation.

⁸ *Accepted for Filing Public Notice at 1-2*; Application, Attachment A – USCC Spectrum Aggregation. As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁹ 47 U.S.C. § 310(d).

¹⁰ See, e.g., *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3634, para. 6 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5111, para. 8 (2015) (*AT&T-Plateau Wireless Order*); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB, IB 2014) (*AT&T-Leap Order*).

¹¹ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6 & n.15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8 & n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13 & n.45.

statutes, and the Commission's rules.¹² If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁵

6. The Commission has fully discussed the contours of the required public interest determination in several orders,¹⁶ which we follow here. In general, the competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁷ The Commission and the Department of Justice each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.¹⁸ The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁹ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.²⁰

7. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.²¹ We note that no parties have raised issues with respect to the basic qualifications of USCC or Hershey, and, in addition, USCC previously

¹² See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹³ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁶ See, e.g., *Applications of AT&T and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139-41, paras. 18-22 (2015); *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to The Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10442-44, paras. 23-27 (2013) (*Alaska Wireless Order*).

¹⁷ See, e.g., *AT&T- Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

¹⁸ See, e.g., *AT&T- Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

¹⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

²⁰ 47 U.S.C. § 309(e); see also, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743, para. 15; *Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002).

²¹ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112, para. 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

and repeatedly has been found qualified to hold Commission licenses.²² We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of USCC or Hershey.²³

III. POTENTIAL PUBLIC INTEREST HARMS

8. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²⁴ In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.²⁵ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review,²⁶ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁷

9. The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”²⁸ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁹ The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.³⁰

²² See, e.g., *Application of USCOC of Central Illinois, LLC, and Adams Telecom, Inc. for Consent To Assign Licenses*, Memorandum Opinion and Order, 31 FCC Rcd 3404, 3406, para. 6 (WTB 2016) (*USCC-Adams Order*); *Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License*, Memorandum Opinion and Order, 30 FCC Rcd 9899, 9902, para. 8 (WTB 2015) (*USCC-McBride Order*).

²³ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

²⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

²⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

²⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231.

²⁷ *Id.* at 6240, paras. 286-88; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108, para. 13.

²⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

²⁹ *Id.*

³⁰ *Id.* at 6240, para. 287; see also *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51 (2015) (*AT&T-Club 42 Order*); see also, e.g., *Application of The Alaska Wireless Network, LLC, and T-Mobile License LLC for Consent To Assign License*, Memorandum Opinion and Order, 31 FCC Rcd 4447, 4451, 4454, paras. 9, 19 (WTB 2016) (*AWN-T-Mobile Order*).

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,³¹ and that the two leading nationwide service providers hold most of the low-band spectrum available today.³² The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³³ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³⁴ We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³⁵

A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁶ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

12. *Product and Geographic Market.* Consistent with recent transaction orders, we find that the relevant product market is a combined “mobile telephony/broadband services” product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁷ In addition, we find that the relevant geographic market is local.³⁸ The Applicants are seeking Commission consent to the proposed assignment of 12 megahertz of low-band spectrum that covers four counties in part of one local market, accounting for well under one percent of the population of the United States.

13. *Input Market for Spectrum and Market Participants.* The Commission has determined in prior orders that the following bands, or portions thereof, should be included in the input market: cellular, broadband PCS, SMR, 700 MHz, AWS-1 and BRS on a market-by-market basis, WCS, the 600 MHz band (at the conclusion of the Incentive Auction), AWS-4, H Block, the majority of the EBS spectrum, and the AWS-3 band (on a market-by-market basis as it becomes “available”).³⁹ The *Sprint-Shentel-*

³¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164, para. 60.

³² *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

³³ *Id.* at 6164, para. 60.

³⁴ *Id.* at 6164-65, paras. 60-61; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14.

³⁵ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13073, para. 37; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6154, 6164-65, 6168, paras. 41, 61, 68-69.

³⁶ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 22.

³⁷ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23.

³⁸ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27.

³⁹ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13064-65, para. 21; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

NTELOS Order found that the AWS-3 1695-1710 MHz band satisfies the standard adopted by the Commission in the *Mobile Spectrum Holdings Report and Order* and “should now be considered available, as well as suitable, on a nationwide basis.”⁴⁰ Therefore, the total amount of spectrum suitable and available for the provision of mobile telephony/broadband services is now 595.5 megahertz, approximately one-third of which is 199 megahertz.⁴¹ We consider facilities-based entities providing mobile telephony/broadband services using these spectrum bands as just described to be market participants.⁴²

B. Competitive Effects of the Proposed Transaction

14. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁴³ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.⁴⁴ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴⁵ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴⁶

15. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. The market does not trigger the revised total spectrum screen,⁴⁷ but in our review of the below-1-GHz holdings, we find that USCC is already attributed with

⁴⁰ *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-38, para. 15.

⁴¹ *Id.*

⁴² See, e.g., *id.* at 3638, para. 16; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751, para. 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions, but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23 & n.78; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37. Further, as AWS-3 (1755-1780 MHz and 2155-2180 MHz on a market-by-market basis) and 600 MHz spectrum become available, we will also consider facilities-based entities providing mobile telephony/broadband services using that spectrum to be market participants. *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16.

⁴³ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-88. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240, paras. 46, 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065, para. 23 & n.82; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123, paras. 31, 35.

⁴⁴ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

⁴⁵ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁴⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁴⁷ See *supra* para. 13; see also *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-39, paras. 15, 17 & n.52.

more than 45 megahertz of low-band spectrum in four counties in part of Nebraska 6 – Keith, and would further increase those spectrum holdings to 61 megahertz as a result of the proposed transaction.⁴⁸ Nebraska 6 – Keith is therefore subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.⁴⁹

16. *Record.* The Applicants contend that USCC is one of the few remaining “mid-sized” service providers,⁵⁰ and they maintain that the proposed transaction is “pro-competitive” as it would allow USCC to compete with its larger rivals.⁵¹ No petitions to deny or comments were received.

17. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the combined entity’s post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁵² In Nebraska 6 – Keith, USCC is already attributed with more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum. As noted above, the proposed transaction is therefore subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*,⁵³ and we evaluate the likely competitive effects of the increased aggregation of spectrum below 1 GHz, irrespective of other factors.⁵⁴

18. In our competitive evaluation, we first note that Nebraska 6 – Keith is a very rural market of approximately 118,000 people with a population density of 18 people per square mile.⁵⁵ In this very rural market, USCC would acquire in this instant transaction an additional 12 megahertz of low-band spectrum in four counties comprising approximately 61 percent of the population of Nebraska 6 – Keith. In addition to USCC, Verizon Wireless, the leading service provider, holds 47 megahertz of low-band spectrum, Sprint holds 14 megahertz of low-band spectrum, and Viaero Wireless holds 25 megahertz of

⁴⁸ Application, Attachment A – USCC Spectrum Aggregation; *Accepted for Filing Public Notice* at 1-2.

⁴⁹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; *see also AT&T-Club 42 Order*, 30 FCC Rcd at 13066, para. 24.

⁵⁰ Public Interest Statement at 3; Response of USCC to the General Information Request Dated Mar. 17, 2016, WT Docket No. 16-14, at 6 (Mar. 31, 2016) (USCC Information Request Response).

⁵¹ Public Interest Statement at 3; USCC Information Request Response at 6-7.

⁵² We derive market shares and HHIs from our analysis of data compiled in our December 2015 NRUF and LNP database, network coverage from January 2016 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3641, para. 21 & n.66; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

⁵³ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; *see supra* para. 15.

⁵⁴ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; *see also AT&T-Club 42 Order*, 30 FCC Rcd at 13071, 13072-73, paras. 34, 37-38; *AWN-T-Mobile Order*, 31 FCC Rcd at 4451, 4454, paras. 9, 19.

⁵⁵ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by 100 people per square mile or less. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (2004).

cellular spectrum covering part of Perkins County.⁵⁶ These service providers therefore each have access to low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum. Verizon Wireless, Viera Wireless, and Sprint also have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers such as USCC present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁵⁷ Further, non-nationwide service providers are important sources of competition in rural areas because these are areas where multiple nationwide service providers may have less incentive to offer high quality services.⁵⁸ As the Commission stated, “[i]n many areas, regional and local service providers offer consumers additional choices in the areas they serve and provide some constraint on the ability of nationwide providers to act in anticompetitive ways to the detriment of consumers.”⁵⁹ In considering the acquisition of this 12 megahertz of low-band spectrum, irrespective of other factors, we find therefore that the potential public interest harms of such additional concentration of this particular spectrum by USCC, a non-nationwide service provider, is low. It is unlikely that this proposed transaction would raise rivals’ costs to any significant extent or would foreclose expansion or entry of mobile wireless services in Nebraska 6 – Keith.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

19. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁰ Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.⁶¹ The

⁵⁶ Three service providers have significant market share in Nebraska 6 – Keith. USCC, Verizon Wireless, and Viera Wireless each hold approximately [REDACTED]%, respectively. Based on the available NRUF data, AT&T, Sprint, and T-Mobile each have [REDACTED] in this rural market.

In addition, in Nebraska 6 – Keith, four service providers have significant 3G coverage. USCC and Verizon Wireless each cover close to 100% of the population and approximately 92% and 98% of the land area, respectively, with their respective 3G networks. ATN (through a lease with AT&T) and Viera Wireless each cover over 90% of the population and more than 50% and 70%, respectively, of the land area with 3G. Further, USCC and Verizon Wireless each cover close to 100% of the population and approximately 88% and 99% of the land area, respectively, with LTE, while Viera Wireless covers close to 100% of the population and more than 70% of the land area with HSPA+. It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3643, para. 25 & n.77; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, para. 31 & n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770, para. 81 & n.279.

In terms of spectrum holdings, two other licensees, AT&T and DISH, each hold 6 megahertz of unpaired low-band spectrum. Further, with respect to spectrum holdings above 1 GHz, across the four nationwide service providers, AT&T holds from 65 megahertz to 75 megahertz, Sprint holds from 40 megahertz to 107.5 megahertz, T-Mobile holds 25 megahertz, and Verizon Wireless holds from 15 megahertz to 45 megahertz. In addition, Viera Wireless holds 45 megahertz to 75 megahertz, DISH holds 65 megahertz, and Hershey will continue to hold 20 megahertz to 30 megahertz of spectrum above 1 GHz.

⁵⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207, para. 180; *see also, e.g., USCC-Adams Order*, 31 FCC Rcd at 3410-12, paras. 17, 19 (WTB 2016); *USCC-McBride Order*, 30 FCC Rcd at 9907, paras. 19, 21 (WTB 2015).

⁵⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, para. 179.

⁵⁹ *Id.*

⁶⁰ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 39; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43.

⁶¹ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 86; *see also AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131.

Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.⁶² Second, each claimed benefit must be verifiable.⁶³ Third, we calculate the magnitude of benefits net of the cost of achieving them and benefits must flow through to consumers, and not inure solely to the benefit of the company.⁶⁴ The Commission applies a “sliding scale approach” to evaluating benefit claims: Under this approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁶⁵ Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.⁶⁶

20. *Potential Benefits.* The Applicants in their detailed demonstration of the claimed public interest benefits assert that the proposed transaction would provide USCC with additional below-1-GHz spectrum that would enable it to offer innovative wireless services in the subject markets and allow USCC to improve and enhance its voice and data service offerings to the public.⁶⁷ The Applicants state that USCC currently deploys LTE on a 5×5 megahertz channel.⁶⁸ According to USCC, it plans to utilize the additional 12 megahertz of Lower 700 MHz B Block spectrum to upgrade and enhance an existing Lower 700 MHz LTE deployment from a 5×5 MHz channel to a 10×10 MHz channel, which, USCC asserts, would permit approximately twice the throughput speeds and capacity of a 5×5 megahertz LTE deployment.⁶⁹ The Applicants contend that the spectrum at issue would permit USCC to deploy a 10×10 channel with throughput speeds comparable to those of the larger service providers, which would allow USCC to provide competitive LTE service.⁷⁰ USCC maintains that the additional spectrum is “essential” to improving its system throughput speeds, such that it can provide an LTE experience comparable to its competitors and thus bolster its long-term competitive position.⁷¹ In addition, USCC asserts that eventually, through the use of carrier aggregation technology, it plans to aggregate all of its and King Street’s Lower 700 MHz channels⁷² to provide 15×15 LTE service in the four counties involved in the

⁶² See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶³ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁴ For example, we will more likely find marginal cost reductions to be cognizable than reductions in fixed cost because reductions in marginal cost are more likely to result in lower prices for consumers. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40.

⁶⁶ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40; see also *AT&T-Leap Order*, 29 FCC Rcd at 2794, para. 131.

⁶⁷ Public Interest Statement at 1-3; see also USCC Information Request Response at 2.

⁶⁸ Public Interest Statement at 2; USCC Information Request Response at 2.

⁶⁹ USCC Information Request Response at 2-4; see also USCC Information Request Response, Attachments C and D.

⁷⁰ Public Interest Statement at 2-3; see also USCC Information Request Response at 2-4; USCC Information Request Response, Attachments B and C.

⁷¹ USCC Information Request Response at 2-4. USCC noted the Commission’s repeated statements about the importance of improving broadband speed, citing by example *Modernizing the E-Rate Program for Schools and Libraries*, *Connect America Fund*, Second Report and Order on Reconsideration, 29 FCC Rcd 15538, 15565-66, para. 68 (2014).

⁷² USCC notes that 12 megahertz of Lower 700 MHz A Block spectrum in the implicated local market is licensed to King Street. USCC, as a result of an operating agreement with King Street, has access to that spectrum to support a current 5×5 Lower 700 MHz LTE channel, although King Street controls the operations. This is the spectrum,

(continued....)

proposed transaction.⁷³ USCC contends that acquiring this license, on which no service is now being offered, is a “vital interim step.”⁷⁴

21. *Evaluation.* We have reviewed the Applicants’ asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential benefits of USCC acquiring, in particular, the below-1-GHz spectrum at issue in Nebraska 6 – Keith. The record provides general support for the Applicants’ contentions that the proposed transaction would likely result in some public interest benefits post-transaction in this very rural market. Specifically, we anticipate that USCC, through the acquisition of this Lower 700 MHz B Block spectrum, would be able to deploy a more competitive LTE network. We further find that by adding this low-band spectrum, USCC potentially would be able to serve these markets with consistently greater throughput.⁷⁵ Moreover, as noted above, we believe that non-nationwide service providers are important sources of competition in rural areas, where multiple nationwide service providers may have less incentive to offer high quality services.⁷⁶ We believe that non-nationwide service providers enhance competitive choices for consumers in the mobile wireless marketplace and help promote deployment in rural areas.⁷⁷ Thus, as a result of the proposed transaction, customers likely are to benefit from access to improved throughput performance and a more robust network, resulting in a better customer experience.⁷⁸

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

22. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. We have reviewed the Applicants’ initial public interest statement, as well as their responses to our requests for additional information and documents. In our competitive evaluation, we have carefully applied enhanced factor review, consistent with what was set out by the Commission in the *Mobile Spectrum Holdings Report and Order*.⁷⁹ After evaluating the likely competitive effects of USCC’s increased aggregation of below-1-GHz spectrum in Nebraska 6 – Keith, which is a market in which USCC currently is attributed with more than one-third of the below-1-GHz spectrum, we find it is unlikely that rivals’ costs would be raised to any significant extent, or that market expansion or new entry would be foreclosed, irrespective of other factors. Further, we find that the record provides general support for the Applicants’ claims that the proposed transaction would likely result in some public interest benefits such as increased throughput and a higher quality network. We emphasize that while we find these benefits weigh in favor of approving this specific transaction, they may not be sufficient to support the approval of other proposed transactions with different underlying characteristics in the future. Based on the record before us and our competitive review, we find that the potential public interest benefits clearly outweigh any potential public interest harms. As a result, under our sliding scale approach, we find that consent to the proposed assignment would serve the public interest, convenience, and necessity.

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USCC maintains, that would be combined with the Lower 700 MHz B Block spectrum to be acquired in the proposed transaction to create the desired 10×10 MHz Lower 700 MHz LTE channel. USCC Information Request Response at 3; *see also* Public Interest Statement at 2, Attachment A – USCC Spectrum Aggregation.

⁷³ USCC Information Request Response at 3.

⁷⁴ USCC Information Request Response at 3.

⁷⁵ *See, e.g., USCC-Adams Order*, 31 FCC Rcd 3404, 3413, para. 22; *USCC-McBride Order*, 30 FCC Rcd at 9908-09, para. 24.

⁷⁶ *Cf. Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, para. 179.

⁷⁷ *Cf. id.* at 6207, para. 180.

⁷⁸ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53.

⁷⁹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-87.

VI. ORDERING CLAUSES

23. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of one license held by Hershey Cooperative Telephone Company to USCOC Nebraska/Kansas, LLC, is GRANTED.

24. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

25. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins
Chief
Wireless Telecommunications Bureau